

January 8, 2018

SUBMITTED ELECTRONICALLY

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: Freedom of Information Act Request for Correspondence on the Potential Red Team/Blue Team Review of Climate Science

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is described at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the U.S. Environmental Protection Agency (“EPA” or the “Agency”). Specifically, EDF requests copies of all correspondence that (i) is related to a red team/blue team review of climate science and (ii) included among its sender(s) or recipient(s) any one or more of the following EPA employees:

- E. Scott Pruitt,
- Brittany Bolen,
- Byron Brown,
- Alex Dominguez,
- Samantha Dravis,
- Sarah Greenwalt,
- Mandy Gunasekara,
- Michelle Hale,
- Millan Hupp,
- Ryan Jackson,
- Albert “Kell” Kelly,
- Daisy Letendre,
- Will Lovell,
- Madeline Morris,
- Charles Munoz,
- George Sugiyama,
- Ken Wagner, or

- William Wehrum.

On August 1, 2017, EDF submitted a separate FOIA request seeking correspondence relating to a potential red team/exercise.¹ This earlier request, which EPA docketed as number EPA-HQ-2017-010055, covered records produced, modified, or transmitted from January 20, 2017 through the date upon which EPA began searching for responsive records.

This new request covers records produced, modified, or transmitted from August 1, 2017, through the date upon which EPA begins searching for records responsive to this request, excluding any records already covered by the August 1 request (EPA-HQ-2017-010055). If any record covered by the August 1 request was subsequently modified or transmitted, such modification or transmission qualifies as a separate record for the purposes of this request, and should therefore be included among the responsive records. This request does not modify—and should not affect the processing of—the August 1 request.

Correspondence includes hard-copy and electronic correspondence including, but not limited to, emails, voice mails, text messages, and correspondence transmitted through any other electronic platform. This request includes correspondence for which any of the listed EPA employees was a sender or recipient, regardless of whether the correspondence also included any other sender(s) or recipient(s).

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” With respect to five other FOIA requests, EPA recently recognized EDF’s eligibility for expedited processing on this basis.² In support of this request for expedited processing, I certify that the following information is true and correct to the best of my knowledge and belief:

- (1) EDF engages in extensive, daily efforts to inform the public about matters involving environmental policy, including climate science. For example, EDF has multiple

¹ See Letter from Benjamin Levitan, EDF, to National Freedom of Information Officer, *Re Freedom of Information Act Request for Correspondence on the Potential Red Team/Blue Team*, (Aug. 1, 2017).

² See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009579 (July 26, 2017).

channels for distributing information to the public, including through direct communication with its more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.³

- (2) Administrator Pruitt has repeatedly discussed the possibility of conducting a red team/blue team review of climate science.⁴ At a recent House Energy and Commerce Committee Hearing, Administrator Pruitt indicated the review may begin as early as this month.⁵ Although the exact timing remains uncertain, just a few days ago, a top EPA official confirmed that Pruitt “would very much like to initiate a process” like the red team/blue team exercise.⁶
- (3) EPA’s potential red team/blue team exercise has garnered significant media coverage and elicited concerns from a wide range of stakeholders and observers for, among other reasons, the possibility that it would not utilize sound scientific research and processes.⁷

³ See, e.g., Keith Zukowski, *The Scott Pruitt Dictionary: What to Look For In His Testimony This Week*, EDF Voices (Dec. 5, 2017), <https://www.edf.org/blog/2017/12/05/scott-pruitt-dictionary-what-look-his-testimony-week>; Sarah Vogel, *Pruitt Takes Steps to Remove Science from Decisions Affecting the Health of American Families*, EDF Climate 411 Blog (Oct. 31, 2017), <http://blogs.edf.org/climate411/2017/10/31/pruitt-takes-new-steps-to-remove-science-from-decisions-affecting-public-health-of-american-families/>; Ben Levitan, *Scott Pruitt’s Relentless Distortions of Science and Law*, EDF Climate 411 Blog (Sept. 12, 2017), <http://blogs.edf.org/climate411/2017/09/12/fighting-back-against-scott-pruitts-relentless-distortions-of-climate-science-and-law/>; Keith Gaby, *Pruitt’s Inquiry Gives Climate Science the Reality TV Treatment*, EDF Voices, (Aug. 10, 2017), <https://www.edf.org/blog/2017/08/10/pruitts-inquiry-gives-climate-science-reality-tv-treatment>; Martha Roberts, *Scott Pruitt Keeps Americans in the Dark on His Activities*, EDF Climate 411 Blog (June 20, 2017), <http://blogs.edf.org/climate411/2017/06/20/scott-pruitt-keeps-americans-in-the-dark-on-his-activities/>; Associate Vice President Jeremy Symons, *Did Trump’s EPA Chief Just Rewrite the EPA’s Mission?*, Huffington Post (Apr. 20, 2017), <http://www.huffingtonpost.com/entry/58efe8b7e4b0156697224dab>; Scott Weaver, *3 Examples from His Senate Testimony Show Scott Pruitt Can’t Be Trusted with Climate Science*, EDF Voices (Feb. 10, 2017), <https://www.edf.org/blog/2017/02/10/3-examples-his-senate-testimony-show-scott-pruitt-cant-be-trusted-climate-science>.

⁴ See, e.g., John Hayward, *Scott Pruitt: Paris Climate Agreement Would Have Driven more ‘Regulation through Litigation’*, Breitbart (June 5, 2017), <http://www.breitbart.com/radio/2017/06/05/pruitt-paris-climate-agreement-driven-regulation-litigation/>; Valerie Volcovici, *EPA Chief Wants Scientists to Debate Climate on TV*, Reuters (July 11, 2017), <http://www.reuters.com/article/us-usa-epa-pruitt-idUSKBN19W2D0>.

⁵ See, Alexander C. Kaufman, *Here’s A List of Climate-Change Deniers The EPA May Be Considering For Its ‘Red Team’ Debate*, Huffington Post, (Oct. 25, 2017); Valerie Volcovici, *EPA Chief Says Public Climate Debate May Be Launched In January*, Reuters (Dec. 7, 2017), <https://www.reuters.com/article/us-usa-epa-debate/epa-chief-says-public-climate-debate-may-be-launched-in-january-idUSKBN1E12P1?>.

⁶ Robin Bravender, *Air Chief Says Challenging Endangerment Finding Is Possible*, Climatewire (Jan. 4, 2018), <https://www.eenews.net/climatewire/2018/01/04/stories/1060070065>

⁷ See, e.g., Amy Harder, *Attacks on EPA’s Climate Debate Go Beyond Usual Suspects*, Axios (July 27, 2017), <https://www.axios.com/pruitts-climate-debate-idea-faces-bipartisan-criticism-2465935280.html>; John P. Holdren, *The Perversity of the Climate Science Kangaroo Court*, Op-Ed, Boston Globe (July 25, 2017), <https://www.bostonglobe.com/opinion/2017/07/24/the-perversity-red-teaming-climate-science/VkT05883ajZaTPMbrP3wpJ/story.html>; David Schnare, *Schnare, Former Transition Official, On His Departure*, EPA Climate Science Review, Guest Perspective, Inside EPA (July 25, 2017), <https://insideepa.com/daily-news/schnare-former-transition-official-his-departure-epa-climate-science-review>; Brad Plumer & Coral Davenport, *E.P.A. to Give Dissenters a Voice on Climate, No Matter the Consensus*, N.Y. Times (June 30, 2017), <https://www.nytimes.com/2017/06/30/climate/scott-pruitt-climate-change-red-team.html?r=0>; Benjamin Santer, Kerry Emanuel, & Naomi Oreskes, *Attention Scott Pruitt: Red Teams and Blue Teams Are No Way to Conduct Climate Science*, Op-Ed, Wash. Post (June 21, 2017),

- (4) EPA is already soliciting input from hand-picked external stakeholders on potential members of a red team/blue team debate.⁸
- (5) The red team/blue team exercise, as reported, would involve our nation's top environmental agency conducting a review of our nation's—and the world's—most significant environmental challenge. Organizing this exercise in a nontransparent or unbalanced manner could undermine the mandates and safeguards that have historically guided U.S. climate science. In contrast, the recent Climate Science Special Report released by the U.S. Global Change Research Program utilized a process of “continuous and transparent participation of scientists and stakeholders across regions and sectors” and implemented extensive quality assurance procedures.⁹ And the Third National Climate Assessment—conducted pursuant to the Global Change Research Act of 1990—“assesse[d] the science of climate change and its impacts across the United States,” spanned more than 800 pages, and undertook an interagency “process of unprecedented rigor and transparency . . . so that the findings . . . would rest on the firmest possible base of expert judgment.”¹⁰
- (6) In addition to the reports cited above, EPA has repeatedly and extensively reviewed climate science, basing its conclusions on transparent, rigorous, and peer-reviewed research. Examples include:
- Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: “The Administrator has determined that the body of scientific evidence compellingly supports this finding” “that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.”¹¹
 - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units: “The EPA has carefully reviewed these recent [major scientific] assessments” released since the Endangerment Finding. “The findings of the recent scientific assessments confirm and strengthen the conclusion that GHGs endanger public health, now and in the future.”¹²

EPA's reviews of robust, peer-reviewed scientific assessments have consistently bolstered the conclusion that anthropogenic greenhouse gases pose a severe risk to human

https://www.washingtonpost.com/news/capital-weather-gang/wp/2017/06/21/attention-scott-pruitt-red-teams-and-blue-teams-are-no-way-to-conduct-climate-science/?utm_term=.cd7233385663.

⁸ See John Siciliano, *Trump Administration Lining Up Climate Change 'Red Team'*, Wash. Examiner (July 24, 2017), <http://www.washingtonexaminer.com/trump-administration-lining-up-climate-change-red-team/article/2629124>; Hannah Northey, *Pruitt Eyes Former Obama DOE Official to Lead Climate Review*, E&E News (July 24, 2017), <https://www.eenews.net/greenwire/stories/1060057816/>.

⁹ U.S. Glob. Change Research Prog., *Climate Science Special Report, Fourth National Climate Assessment*, Vol. 1, at 1-2 (2017), https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf.

¹⁰ U.S. Glob. Change Research Prog., *Climate Change Impacts in the United States: The Third National Climate Assessment* iii-iv (2014), http://nca2014.globalchange.gov/system/files_force/downloads/low/NCA3_Climate_Change_Impacts_in_the_United_States_LowRes.pdf?download=1.

¹¹ 74 Fed. Reg. 66,496, 66,497 (Dec. 15, 2009).

¹² 80 Fed. Reg. 64,510, 64,517-18 (Oct. 23, 2015).

health and welfare. Given the significant and widespread interest in this area, the public needs immediate access to information about efforts to reopen or rehash assessments that the Agency has previously undertaken in a sound, thorough, and conclusive manner—and that have already been upheld by the U.S. Court of Appeals for the D.C. Circuit.¹³

- (7) Any process that EPA uses to review climate science must be subjected to public scrutiny and input. Establishing such a process non-transparently and drawing back the curtain only for a publicized debate risks prioritizing performance value over scientific values. The public must understand early on how any red team/blue team exercise is being envisioned and organized, and certainly should be aware of the process before the exercise begins. Expedited processing is necessary to achieve that end, particularly given the Administrator’s indication that the process could begin just weeks from now.

Request for Fee Waiver

FOIA provides for records to be furnished without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). EDF’s interest in the disclosure of these materials is not commercial, and the information EDF requested would contribute significantly to public understanding of government activities. Following an administrative appeal, EPA granted a fee waiver for EDF’s August 1 FOIA request on the red team/blue team exercise.¹⁴ EDF believes we are entitled to a fee waiver for substantially the same reasons here:

a. Disclosure of the Requested Information Is in the Public Interest.

EPA has established four factors for determining whether disclosure of the requested information is in the public interest. 40 C.F.R. § 2.107(l)(2)(i)-(iv). EDF’s request satisfies each of these factors.

1. “The subject of the request.” *Id.* § 2.107(l)(2)(i). The records that EDF requested have “a connection that is direct and clear” to “the operations or activities of the federal government.” *Id.* EDF has requested correspondence of key EPA officials relating to a possible red team/blue team review of climate science. EDF’s request satisfies this factor by directly addressing correspondence of a specific list of EPA employees concerning a discrete government activity—a red team/blue team review of climate science.¹⁵ Indeed, Department of Justice Guidelines, which generally recommend the approach that EPA has adopted here, state that “in most cases records possessed by a federal agency will meet this threshold.”¹⁶

¹³ *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 119-122 (D.C. Cir. 2012).

¹⁴ Letter from Kevin Miller, Assistant General Counsel, EPA General Law Office, to Benjamin Levitan, Attorney, EDF (Nov. 8, 2017).

¹⁵ Letter from Benjamin Levitan, Attorney, EDF to National Freedom of Information Officer, *Re: Freedom of Information Act Request for Correspondence*, at 1-2 (August 1, 2017).

¹⁶ DEPARTMENT OF JUSTICE, DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION ACT: FEES AND FEE WAIVERS, 27 (Aug. 23, 2013), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/feesfeewaivers.pdf#p22>.

2. “The informative value of the information to be disclosed.” *Id.* § 2.107(l)(2)(ii). EPA defines this factor as “[w]hether the disclosure is ‘likely to contribute’ to an increased understanding of government operations or activities.” *Id.* EDF seeks records that would contribute to greater public understanding of the red team/blue team exercise, including the correspondence of EPA staff in planning and developing the exercise and the external parties with which EPA is corresponding on this topic. Very little information about this exercise is publicly available. Disclosure of the requested records will therefore greatly aid understanding of the red team/blue team exercise, since virtually any disclosure would increase the amount of information available to the public.

3. “The contribution to an understanding of the subject by the public is likely to result from disclosure.” *Id.* § 2.107(l)(2)(iii). “The disclosure must contribute to the understanding of a reasonably broad audience,” and not merely serve the interests of the individual requester. *Id.* There is significant public interest in the red team/blue team exercise, evidenced by widespread news coverage of the proposal.¹⁷ Additionally, this Agency activity is clearly geared towards a broad audience; as Administrator Pruitt noted, “The red team blue team is intended to be a response that provides answers to the American people . . . the American people deserve, in my view, an open transparent honest discussion about this issue.”¹⁸ Still, EPA has provided little information to the public about the process behind a red team/blue team exercise, despite the fact that EPA may begin its red team/blue team exercise in the next few weeks.¹⁹ Because there is widespread interest in this exercise, because there is scant information about it, and because the exercise could begin in the next few weeks, records responsive to this request would be of interest to a broad public audience.

EDF shall undertake all necessary effort to ensure we disseminate the records, along with informative interpretation and analysis, to the largest audience possible. EDF has over 150,000 followers on Twitter, and over 300,000 followers on Facebook, providing ample pathways for

¹⁷ See, e.g., Kelly Levin, *Pruitt’s “Red Team-Blue Team” Exercise a Bad Fit for EPA Climate Science*, WORLD RESOURCES INSTITUTE (June 20, 2017), <http://www.wri.org/blog/2017/06/pruitts-red-team-blue-team-exercise-bad-fit-epa-climate-science>; Josh Voorhees, *EPA Chief Scott Pruitt Is Now Trying to Use Military Techniques to Sow Doubt About Climate Change*, SLATE (June 30, 2017), http://www.slate.com/blogs/the_slatest/2017/06/30/scott_pruitt_wants_to_use_a_red_team_to_sow_doubts_about_climate_change.html; Timothy Cama, *EPA Head Launching Initiative to ‘Critique’ Climate Science*, THE HILL (June 30, 2017) <http://thehill.com/policy/energy-environment/340223-epa-head-to-launch-initiative-to-challenge-climate-science>; Brady Dennis and Juliet Eilperin, *EPA Chief Pushing Governmentwide Effort to Question Climate Change Science*, WASHINGTON POST (July 1, 2017) https://www.washingtonpost.com/news/energy-environment/wp/2017/07/01/epa-chief-pushing-governmentwide-effort-to-question-climate-change-science/?utm_term=.9f224c5484c6; David Roberts, *Scott Pruitt’s Terrible Plan to “Objectively” Assess Climate Science*, VOX, (Aug. 2, 2017) <https://www.vox.com/energy-and-environment/2017/8/2/16082020/pruitt-red-team-exercise>; Caitlin MacNeal, *Scott Pruitt Is Reportedly Starting An EPA Initiative to Challenge Climate Science*, BUSINESS INSIDER, (June 30, 2017), <http://www.businessinsider.com/epa-challenging-climate-change-science-scott-pruitt-2017-6>; John Siciliano, *Trump Administration Lining Up Climate Change ‘Red Team’*, WASHINGTON EXAMINER (July 24, 2017), <http://www.washingtonexaminer.com/trump-administration-lining-up-climate-change-red-team/article/2629124>.

¹⁸ Reuters Staff, *Transcript of Interview with EPA Administrator Scott Pruitt*, REUTERS (July 11, 2017), <http://www.reuters.com/article/us-usa-epa-pruitt-text-idUSKBN19X01Z>.

¹⁹ See, Valerie Volcovici, *EPA Chief Says Public Climate Debate May Be Launched In January*, REUTERS (Dec. 7, 2017), https://www.reuters.com/article/us-usa-epa-debate/epa-chief-says-public-climate-debate-may-be-launched-in-january-idUSKBN1E12P1?utm_source=34553&utm_medium=partner.

distributing information. EDF is well-positioned to share those records with the public by issuing press releases, action alerts, reports, analyses and other public outreach materials. The outreach channels are proven effective: a press release that EDF released in response to a recent partial production of EPA records was quickly picked up by a major media outlet.²⁰ EDF will also feature and actively publicize responsive records on its FOIA web page.²¹

4. “The significance of the contribution to public understanding.” *Id.* § 2.107(l)(2)(iv). Like EDF’s previous requests where EPA has granted fee waivers, this request seeks records that would significantly contribute to public understanding. As noted above, any records obtained by EDF would be significant because there is widespread public interest in the subject matter,²² because very little is known about the red team/blue team exercise, and because the exercise could begin as soon as next month. EDF would make every effort to expeditiously disseminate the records and assist the public in understanding their significance.

b. EDF Does Not Have a Commercial Interest in the Information.

To determine whether the request is primarily in the commercial interest of the requester, EPA has established two factors. *Id.* § 2.107 (l)(3)(i)-(ii). Both factors support a fee waiver for this request.

1. “The existence and magnitude of a commercial interest.” *Id.* § 2.107(l)(3)(i). EDF is a non-partisan, non-profit organization, and does not have a commercial interest in acquiring this information.

2. “The primary interest in disclosure.” *Id.* § 2.107(l)(3)(ii). Since EDF has no commercial interest in these records, EDF’s primary interest is not commercial.

As demonstrated above, EDF’s FOIA request clearly satisfies the statutory and regulatory factors for a fee waiver. We respectfully request that EPA grant a fee waiver for this request. For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF’s request for a fee waiver is denied or if you have any questions about this request, please contact us immediately by telephone at (202) 572-3318 or by email at blevitan@edf.org.

²⁰ See *Environmental Defense Fund Obtains Information on Over 1,900 Climate-Related Items Removed from or Modified on EPA Website*, EDF (Aug. 11, 2017), <https://www.edf.org/media/environmental-defense-fund-obtains-information-over-1900-climate-related-items-removed-or>; Coral Davenport & Eric Lipton, *Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, N.Y. TIMES (Aug. 11, 2017), <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html>.

²¹ EDF, *Promoting Government Transparency* (last visited Aug. 23, 2017), <https://www.edf.org/climate/promoting-government-transparency>.

²² See footnote 17 and accompanying text.

Respectfully submitted,

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